82-835

No. ———

Office - Supreme Court, U.S.
FILED
NOV 19 1982
ALEXANDER L. STEVAS
CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

———

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK,
Appellee-Plaintiff.

———

ON APPEAL
FROM THE KENTUCKY COURT OF APPEALS

———

PATRICIA THOMPSON, Pro Se
EDDIE THOMPSON, JR., Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

I hereby certify that 3 copies of the foregoing Petition has been served by the United States mail, upon: Mr. Richard Nelson, 11 W. 6th Street, Covington, Kentucky 41011, this ..... day of October, 1982.

.....
PATRICIA THOMPSON, Pro Se

.....
EDDIE THOMPSON, JR., Pro Se

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTIONS PRESENTED

1. Was the hiring of police officers and others by the Bank (Appellee), to use force, terror, and violence to gain possession of the Thompsons' (Appellants) real property in a mortgage foreclosure, and to criminally prosecute the Trompsons (Appellants) to aid in the wrongful foreclosure a violation of the Thompsons' (Appellants) constitutional rights – 4th, 5th, and 14th Amendments to U.S. Constitution?

2. Could there be a valid foreclosure sale without an appraisal, or alternately, where the Bank (Appellee) refused the mortgage payments and returned the mortgage payments to the Thompsons (Appellants)?

3. Could one panel of Court of Appeals overrule another panel in the same case on the same issue?

4. Is the denial of a Motion to relieve a party from a Final Judgment, order or proceeding a final appealable order?

INDEX

	Page
Questions Presented	1
Opinion Below	1
Jurisdiction	2
Statutes Involved	5
Statement of Fact	10
The Questions Presented are Substantial	16
Conclusion	23
Appendix:	
Notice of Appeal	1a
Request to Submit the Record to U.S. Supreme Court.	3a
Order Denying Discretionary Review	5a
Order Denying Motion to Reconsider	6a
Opinion and Order Dismissing Appeal	7a
Order, 1/13/82	11a
Order, 12/1/81	12a
Order, 10/12/81	13a
Order, Circuit Court, 6/17/81	14a
Notice of Certification of Record on Appeal	15a
Certification, 8/21/81	17a

page

Interrogatories, 79-40 ..... 19a

Letter, Returning Mortgage Payment 21a

Writ and Order of Possession, 4/12/78 ..... 23a

Affidavit, Nelson, 7/20/78 ..... 25a

Pre-Trial Conference, 79-40 ..... 27a

Order, 4/18/78 ..... 31a

Appraisement 33a

Judgment, 79-CA-1456-MR 35a

Order, 79-CA-1456-MR 38a

True Bill, 4/14/76 ..... 39a

Order of Distribution 41a

Certification 43a

Lease Agreement 45a

CITATIONS

Cases: page

Abellira v. District Court of Appeals, Third District, 109 P 2d 942 21

Adams v. Napier (Ky. 1960), 334 S.W. 2d 915 19

Adickes v. Kress & Co., 398 U.S. 144, 26 LEd 2d 142, 90 SCt 1598 4,16

Angel v. Byars, 153 Ky 208 19

Atwood v. Weens, 99 U.S. 183, 187 18

Aultman and Taylor v. Mead, 121 Ky 241 18

Bell v. Lindsey Wilson College, 490 S.W. 2d 145 ..... 15, 20, 22

Bennett v. Hunter, 9 WALL. 326 18

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 29 LEd 2d 619, 91 SCt 1999 4

Briscoe v. Levi, 53 LEd 2d 439, 432 U.S. 404, 97 SCt 2428 ..... 4, 22

Carmichael v. Rice, 158 p. 2d 290 18

Clume v. United States, 159 U.S. 590 ..... 4, 19

Cole v. Stephen, 582 S.W. 2d 657 20

Coppedge v. U.S., 369 U.S. 438 21

Davis v. Passman, 442 U.S. 228, 60 LEd 2d 846, 99 SCt 2264 4

Dolton v. Cain, 20 LEd 830 ..... 4, 18

Edmonds v. Stratton (MO. 1970), 457 S.W. 2d 228.. 20

Fuentes v. Shevin, 407 U.S. 67 17

Page

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 888 LEd 1250 ..... 4, 23

Hub Bel Air Inc. v. Hirsch, 102 A 2d 550 19

Iron Mountain and Helena Railroad v. Johnson, 119 U.S. 608, 30 LEd 504 ..... 4, 16

Kalb v. Fuerstein, 84 LEd 370, 308 U.S. 433 .... 4, 20, 23

Kentucky Workman's Compensation Bd. v. Alexander, 562 S.W. 2d 670 22

Key v. Wise, 629 F 2d 1049 20

Klapport v. U.S., 335 U.S. 601, 93 LEd 266, 69 S.Ct. 384 ..... 4, 22

Martin v. Hunter's Lessee, 1 WHEAT 304 ..... 2, 4

Maynard v. Maynard, 167 S.W. 2d 853 23

Metropolitan Life Insurance Co. v. Myers, 109 S.W. 2d 1194 22

Molloy v. U.S. 259 F 2d 801 20

Monroe v. Pape, 365 U.S. 167, 5 LEd 2d 492, 81 S.Ct. 473 ..... 4, 16

Morgan v. Wickliffe, 24 KLR 1039, 70 S.W. 680 18

Mullane v. Central Hanover B & T Co., 339 U.S. 306, 320 17

NAACP v. Alabama, 357 U.S. 449, 2 LEd 2d 1488, 78 S.Ct 1163 ..... 4, 21

Pennoyer v. Neff, 95 U.S. 773, 24 LEd 565 ..... 4, 17

Salitan v. Dashney, 347 P 2d 974, 81 ALR 2d 53 22

Shelley v. Kraemer, 92 LEd 1161, 334 U.S. 1 ..... 4, 23

	Page
Sikora v. American Can. Co., 622 F 2d 1116	20
Silas v. Sears Roebuck & Co., 586 F 2d 382	22
Springfield Fire and Marine Ins. Co. v. Phillips, 16 KLR (Abstract) 390	18
State v. Larson, 143 N.E. 2d 502	16
Taylor v. Commonwealth, 568 S.W. 2d 52	21
U.S. v. Lee, 106 U.S. 196, 219	16
U.S. v. Price, 383 U.S. 787, 794	4
Webb v. Nicely, 286 Ky 632, 151 S.W. 2d 768	4
Williams v. Oklahoma, 395 U.S. 458, 23 LEd 2d 440, 89 S.Ct. 1818	4, 20

Miscellaneous:

U.S. Constitution, 4th Amendment	4, 5, 16
U.S. Constitution, 5th Amendment	4, 5, 16
U.S. Constitution, 14th Amendment	4, 5, 16, 23
Kentucky Constitution, Section 115	6, 20
28 U.S.C. 1257 (2)	4, 6
Kentucky Civil Rule 60.02	23
Kentucky Civil Rule 75.07 (1)	3, 8, 11, 13, 18, 19
Kentucky Civil Rule 75.07 (9)	3, 8, 11, 13, 18, 19
Kentucky Civil Rule 75.07 (10)	3, 8, 11, 13, 18, 19
Kentucky Civil Rule 76.18 (8)	8, 15
Kentucky Civil Rule 76.34 (A)	9

Page

Kentucky Civil Rule 76.34 (B) 9

Kentucky Civil Rule 76.38 (2) 9

K.R.S. 426.200 (3) 6, 10

K.R.S. 426.520 ..... 7, 10

K.R.S. 426.525 7

No. ————

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Appellants-Defendants,

vs.

PEOPLES LIBERTY BANK,
Appellee-Plaintiff.

ON APPEAL
FROM THE KENTUCKY COURT OF APPEALS

OPINION BELOW

Amended Notice of Appeal was filed in the Kentucky Court of Appeals on October 5, 1982. App. p. 1a.

A Request to submit the record to the U.S. Supreme Court was filed in Kenton Circuit Court on September 23, 1982. App. p. 3a

The Kentucky Supreme Court denied Appellant's Motion for discretionary review on August 24, 1982. App. p. 5a.

The Kentucky Court of Appeals denied Appellants-Thompsons Motion for reconsideration of Order dismissing Appeal on May 5, 1982. App. p. 6a.

On March 19, 1982, the Kentucky Court of Appeals

dismissed Appellants' Appeal and denied Appellants' Motion to correct and/or modify the record. App. p. 7a, 9a.

On January 13, 1982, the Kentucky Court of Appeals denied Appellants' (Thompsons) oral argument pursuant to Kentucky CR. 76.16 (D) (an arbitrary rule). App. p. 11a.

On December 1, 1981, the Kentucky Court of Appeals denied Appellee (Bank) Motion to reconsider its Order of October 12, 1981, denying Appellee's Motion to dismiss App. p. 12a.

On October 12, 1981, the Kentucky Court of Appeals denied Appellee (Bank) Motion to dismiss Appeal and denied Appellants-Thompsons' Motion for leave to permit oral arguments. App. p. 13a.

On June 17, 1981, (after a hearing which the court declined to transcribe) the Kenton Circuit Court denied Appellants (Thompsons) Motion to set aside (a) mortgage foreclosure sale, (b) order confirming sale, (c) cancel deeds made (entered) pursuant thereto, and (d) writs of possessions entered thereafter. App. p. 14a, Rec. p. 54.

JURISDICTION

The gravaman of Appellants-Thompsons complaint is that Appellants (hereinafter referred to as the Thompsons) were defrauded and deprived of their property (real and personal) in a foreclosure action, without due process of law or equal protection of the law, in contravention of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

The Thompsons only assert the constitutional right to have their position examined by a tribunal, whose province it is to construe the Constitution and Laws of the Union. *Martin* v. *Hunter's Lessee,* I WHEAT 304.

The Thompsons are Negroes and the only family in

Kentucky, if not the Continental United States, in this day and age where Appellee-Bank (hereinafter referred to as Bank) has used force, fraud, terror, and violence to forcibly and wrongfully take property from the Thompsons (mortgagors), including their equity in the real property and their (Thompsons) chattels and papers.

Before the Bank commenced the foreclosure action in August 1976, the Bank had refused the Thompsons mortgage payments in June 1976; returned the Thompsons mortgage payments when mailed to Bank (App. p. 21a); and the Bank and/or its attorney, Mr. Richard Nelson, had arranged for a City of Covington police officer, Jim Mercer, to file false criminal charges against Eddie Thompson, resulting in a true bill from the Kenton County Grand Jury on/or about April 14, 1976. App. p. 39a, Rec. p. 57, 58 Exhibits. (We may note that the Deputy Court Clerk E. Nienaber wilfully neglected to index the Exhibits presented to trial court for hearing on the Thompson's Motion on June 15, 1981, in violation of Ky. CR. 75.07.) (App. p. 27a, 37a. Rec. p. 47-57.) These false charges were filed to harass and discredit the Thompsons, so that they (Thompsons) would be unable to muster counsel to defend the wrongful foreclosure action. The false charges remained for over 2 years and were not dismissed until new false charges were brought by an attorney hired by the Bank, Richard Slukich, and police officers hired by the Bank. The Bank admits hiring these police officers at the rate of $5 an hour and giving Mr. Slukich a deed. App. p. 20a, 27a, 29a; Rec. p. Exhibits Attached to Record Page 57-58. Note: Exhibits not indexed, in violation of 75.07 (10).

The question then is whether the hiring of police officers and a second attorney, by the Bank, to use force, terror, and violence to gain possession of the Thompsons real property in a mortgage foreclosure action and to criminally

prosecute the Thompsons to aid in the wrongful mortgage foreclosure were violations of the Thompsons constitutional rights pursuant to the United States Constitution Fourth, Fifth, and Fourteenth Amendments.

A cause of action and damages remedy can be implied directly under the Constitution when the due process clause of the Fifth Amendment is violated. *Davis* v. *Passman*, 442 U.S. 228; *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388.

The involvement of state officials . . . provides the state action to show a direct violation of . . . Fourteenth Amendment, equal protection rights, whether or not the actions were officially authorized or lawful.

Adickes v. *Kress & Co.*, 398 U.S. 144; *U.S.* v. *Price*, 383 U.S. 787, 794, *Monroe* v. *Pape*, 365 U.S. 167.

The jurisdiction of the U. S. Supreme Court to review the decision of the Kentucky Court of Appeals on Appeal is conferred by 28 U.S.C. 1257 (2). In addition to the aforementioned cases, the following decisions sustain the jurisdiction of the Supreme Court to review this case:

1. *Briscoe* v. *Levi*, 53 LEd 2d 439
2. *Clume* v. *United States*, 159 U.S. 590
3. *Dolton* v. *Cain*, 20 LEd 830
4. *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238
5. *Iron Mountain and Helena Railroad* v. *Johnson*, 119 U.S. 608
6. *Kalb* v. *Fuerstein*, 89 LEd 370
7. *Klapport* v. *U.S.*, 335 U.S. 601
8. *Martin* v. *Hunter's Lessee*, 1 WHEAT 304
9. *NAACP* v. *Alabama*, 357 U.S. 449
10. *Pennoyer* v. *Neff*, 95 U.S. 773
11. *Shelley* v. *Kraemer*, 334 U.S. 1
12. *Williams* v. *Oklahoma*, 395 U.S. 458

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any

person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

28 U.S.C. 1257(2)

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

CONSTITUTIONAL AND STATUTORY PROVISIONS

KENTUCKY

Kentucky Constiution, Sec. 115

In all cases, civil or criminal, there shall be allowed as a matter of right at least one appeal to another court.

K.R.S. 426.200(3)

Before a sale of land, the officer shall have the land appraised, under oath, by two (2) disinterested, intelligent housekeepers of the county . . . The appraisal shall be in writing, signed by the persons making it, and returned with the execution. The officer shall refer to and explain the proceeding in his return on the execution, which return shall be recorded in full.

K.R.S. 426.520(2)

The appraisal made shall be in writing, signed by the persons making it, and returned by the commissioner or officer of the court which made the order or rendered the judgment for the sale of the property. The appraisal shall be filed among the papers of the cause in which the judgment was rendered or the order made, and entered on the records of the court.

K.R.S. 426.525

Foreclosure of a mortgage is forbidden; provided, however, that this section shall not preclude a mortgage after default from taking possession of property subject to the mortgage which has been abandoned by the mortgagor, for the purpose of preserving and maintaining the same, harvesting crops, or letting the same, all to the account of the mortgagor; and any reasonable expenses incident thereto including taxes and insurance shall be added to the principal of the mortgage, and secured by it. For the purpose of this section, property shall be deemed to have been abandoned when the mortgagor has moved from the property and when by the nature of the property in question when further neglect or failure to attend will decrease its value. Any right a mortgagee acquires in a tenant's interest in crops raised on shares is inferior to any prior existing lien of the landlord on the tenant's interest. Nothing in this section shall be construed as conflicting with the provisions of K.R.S. 383.110 (c.c. 375: Trans. Act 1952, CH. 84, Sec. 1; Amend. Acts 1972, CH. 90, Sec. 1).

Kentucky Supreme Court Rule 103(8)(A) Precedents

The Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court.

Kentucky Civil Rules

CR. 75.07 (1) The clerk of the trial court shall prepare and certify the *entire original* record on file in his office in accordance with the requirements of paragraphs (9) and (10) of this Rule 75.07. . .

CR. 75.07 (9) All parts of the writen record on appeal shall be arranged in the order in which they were filed or entered. If the record comprises more than 150 pages, it shall be divided into two or more volumes not exceeding 150 pages each. Each volume shall be securely bound at the left side.

CR. 75.07 (10) There shall be a general index at the beginning of the record and an index to each volume in the front thereof which shall show, in the order in which they appear, the pages on which all pleadings, orders, judgments, instructions, and papers may be found, together with the name of each witness and the pages on which his examination and cross-examination appear. All exhibits filed with the record shall be sufficiently identified and the index shall direct where they may be found.

CR. 76.12 (8) (a) A brief may be stricken for failure to comply with any substantial requirement of this Rule 76.12 (8) (2).

CR 76.16 (4) A person who is not a licensed attorney at law will be permitted to make an oral argument only with leave of the court.

CR. 76.34 (A) In addition to any other relief provided by these Rules, an adversary party may move to dismiss an appeal or cross-appeal because it is not within the jurisdiction of the appellate court or because it has not been prosecuted in conformity with the rules;

CR. 76.34 (b) Timely filing of a motion to dismiss suspends the running of time for procedural steps otherwise required with regard to the appeal and any cross-appeal in the same proceeding, and time will continue to run as provided by Rule 76.12 (2) after the date an order is entered, denying the motion or passing to the merits.

CR. 76.38 (2) Unless otherwise provided by these Rules or ordered by the court, a party adversely affected by a decision rendered by order may within 10 days after the date of its entry move the court to reconsider it. On ex parte motion the court may suspend the effectiveness of such order pending disposition of the motion to reconsider. The timely filing of a motion to reconsider an order granting or denying a motion to dismiss shall suspend the running of time to the same extent as provided by Rule 76.34(6) (b) with respect to the filing of a motion to dismiss.

STATEMENT OF FACT

In June 1976, the Bank refused the Thompsons' mortgage payments to create a delinquent mortgage account on the Thompsons' home; returned payment when mailed in (App. p. 21a) ; and neglected to carry out an oral agreement on a rehab project. The properties had no connection except that the Thompsons owned both properties.

The Bank had already had criminal charges filed against Eddie Thompson in April 1976 (App. p. 39a) and on August 27, 1976, filed a foreclosure action.

There was no appraisal of the Thompson property as required by Kentucky State Law K.R.S. 426.200, K.R.S. 426.520.

After the Thompsons complained, a Statement of Appraisement was entered on the record. App. p. 33a; Rec. p. 28-29.

The Statement of Appraisement does not meet the statutory requirements of this state. App. p. 33a. The Appraisers admit they were not inside the property.

The record has been tampered with to conceal the exact time sequence of the Statement of Appaisement appearance upon the record – a violation of C.R. 75.07.

Immediately following the foreclosure, the Bank filed a forcible detainer action in the Kenton Quarterly Court to gain possession of the Thompson home. App. p. 35a, 37a; Rec. p. 47-52 Exhibit. (We may note the Exhibits are not indexed – a violation of 75.07.) That action was appealed to the Kenton Circuit Court, by the Thompsons, where, when the Bank recognized its fraudulent activities may be uncovered, the Bank moved to dismiss, with prejudice, its claim for the Thompson home. App. p. 35a, 37a; Rec. p. 47-52 Exhibits. This was done, and the Bank readily concedes the Bank lost that action. (Note: Exhibits not indexed in the record)

The Order of June 17, 1981, denying the Thompsons' Motion to set aside the illegal foreclosure was the second said motion. The first Motion being filed on March 8, 1978, (Rec. p. 36) and ultimately denied on April 18, 1978, without Notice or hearing. App. p. 31a; Rec. p. 43. (We may note the date is *April 18, 1978* instead of March 28, 1978, as stated in the Opinion and Order of the Court of Appeals dismissing the Appeal.) App. p. 7a, 8a.

The Bank gave the Thompsons no notice because Mr. Nelson knew Eddie Thompson would be in court defending false criminal charges he (Nelson) had arranged.

On at least two occassions Eddie Thompson was arrested on false charges, pre-arranged by Mr. Nelson, while he (Eddie) was attempting to review the record of this case in the Kenton Circuit Court Clerk's office.

Because of undue harassment and false criminal prosecution, the Thompsons were unable to muster defense to the wrongful foreclosure action, or to appeal a CR. 60.02 Motion to set aside the wrongful foreclosure action.

During the time the first Motion was filed and ultimately denied (March 8, 1978 to April 18, 1978), and on or about April 3, 1978, Mr. Nelson wrote the Thompsons a letter advising them that ". . . the Writ of possession issued from the Circuit Court on October 19, 1977, is a final order . . . We can proceed in the same manner again . . . and have a moving company just move you out of the house while my clients take possession . . . If I do not hear from you in writing within 10 days . . . we intend to proceed without further notice, as such as not required." App. p. 27a, 28a, 29a; Rec. p. 57-58 Ex. III Trans. p. 85-86. (We may note again the Exhibits were not indexed by the Court Clerk – a violation of CR. 75.07 (10) –)

When Eddie Thompson called Mr. Nelson a couple of days later and informed him that they (Thompsons) were

not leaving their home, Mr. Nelson informed Eddie Thompson that he (Nelson) would have him (Eddie) "taken care of." When Eddie Thompson asked Mr. Nelson what he meant, Mr. Nelson hung up.

On April 12, 1978, the Bank had Judge Goodenough to sign a void writ and order of possession. App. p. 23a; Rec. p. 42.

Even though the record has been tampered with, it is clear from the record that no application was made to the Kenton Circuit Court for a writ and order of possession signed on April 12, 1978.

On April 15, 1978, 3 Covington police officers beat (Eddie) Thompson and brought false criminal charges against him (Eddie). One of the police officers (T. Finan) threatened to put (Eddie) Thompson "in the river."

Mr. Nelson admits he and the Bank hired the police officers (including T. Finan). App. p. 19a, 20a, 27a, 29a; Rec. p. (*Exhibits not indexed by E. Nienaber*) CR. 75.07 (10)

On July 19, 1978, while the Thompsons were at work, the Bank had the sheriff to execute the void April 12, 1978, writ and order of possession – App. p. 23a; Rec. p. 42 – by setting the Thompsons possessions upon the street.

On July 19, 1978, (Eddie) Thompson visited Judge Daniel Goodenough's chambers to ascertain the validity of the April 12, 1978, writ and order of possession.

On July 19, 1978, Judge Daniel Goodenough had no explanation for the April 12, 1978 writ and order of possession, whereupon the Thompsons returned home and commenced putting their personal chattel and papers back into their home.

At this point, two police officers produced a lease agreement. (A lease agreement between the police officers and the Bank) App. p. 45a; Rec. p. not indexed. These police officers threatened to arrest the Thompsons for criminal

trespassing if they (the Thompsons) did not leave their (Thompsons) home.

The Bank had actually arranged for a police officer to 'accidentally' harm (Eddie) Thompson. The lease carried the stipulation "Not responsible for accidents on premises." Ex. App. 45a.

On July 20, 1978, Mr. Nelson, attorney for the Bank, filed an affidavit claiming he (Nelson) had inadvertently inserted April 12, 1978, instead of July 12, 1978, when in fact, Judge Goodenough signed and inserted the date as April 12, 1978. App. p. 25a; Rec. p. 45. Why would the Judge sign an order on July 12, 1978, when the order had already been filed by the clerk on July 7, 1978.

Armed police officers hired by the Bank took over and occupied the Thompson home on July 19, 1978 on a 24-hour-a-day basis remaining until July 27, 1978, when friends of the Thompsons presented a petition to the Mayor and City Commissioners, demanding to know why police officers were occupying the Thompsons home.

The Thompsons slept in neighbors' yards until the police officers left on July 27, 1978, then moved back into their (Thompson) home.

On July 29, 1978, Mr. Richard Slukich, another attorney hired by the Bank, came by the Thompson home and told (Eddie) Thompson that he (Slukich) had bought the Thompson's home from the Bank. App. p. 27a, 29a; Rec. p. *Exhibits not indexed* CR. 75.07 (10)

Mr. Slukich could not produce a deed, but he (Slukich) did on July 29, 1978, have (Eddie) Thompson arrested and charged with criminal trespass and burglary in the first degree.

The Bank was able to get as a condition of (Eddie) Thompson's bond in Kenton District Court that "Eddie cannot go home" – property in question here.

At the criminal trespass trial on the charges brought by Mr. Slukich, Mr. Slukich testified he owned the Thompson home, and Mr. Slukich served as assistant prosecutor at the trial.

Mr. Nelson sent word to the Thompsons that the burglary first degree charge would be dropped if the Thompsons would forget about their home. After 2 appearances before the Kenton County Grand Jury, the charge was dismissed by the Grand Jury in 1979.

To gain entrance to the Thompson home, subsequent to July 29, 1978, the Bank hired persons unknown to the Thompsons to break into their home and change the locks on the doors, while a City of Covington police officer, paid by the Bank, stood watch. All of the Thompsons' chattels and papers were in their (Thompsons) home.

As of today, the Thompsons have no knowledge of the whereabouts of their personal possessions.

After the Thompsons personal possessions were taken and Mr. Slukich completed his criminal prosecution of (Eddie) Thompson, the Bank sold the Thompson home for $48,500.00. The Bank allegedy bought the Thompson home for $14,500.00. App. p. 41a, 42a, The Bank also retained the $5,952.60 equity ordered paid to the Thompsons. App. p. 41a, 42a; Rec. p. 18.

Mr. Nelson and Mr. Slukich are not parties to *this* action but are mentioned as background.

To further complicate matters, on August 21, 1981, E. Nienaber made a misstatement to the Kentucky Court of Appeals by certifying that the record was completed and certified in accordance to Ky. CR. 75.07. App. p. 16a; Rec. p. *Certification*.

At some later date, E. Nienaber made another certification dated August 21, 1981. App. p. 17a, 18a. This certification was not served upon the Thompsons.

When the record was requested by the Kentucky Court of Appeals, E. Nienaber presented 2 records in violation of Ky. CR. 75.07 – a record by E. Nienaber, App. p. 16a and a supplemental record by E. Settles, App. p. 43a, 44a. E. Nienaber and E. Settles are the same person.

It was obvious that the certification mailed to the Kentucky Court of Appeals on August 21, 1981, App. p. 16a, and the later certification dated August 21, 1981, App. p. 17a, 18a, were not the same. The Kentucky Court of Appeals refused to correct and/or modify the record. App. p. 7a, 9a. The Kentucky Court of Appeals denied two motions by the Bank to dismiss this Appeal. App. p. 12a, 13a. And denied the Thompsons oral arguments – Ky. CR. 76-16.D App. p. 11a, 13a.

In spite of the fact that fraud by the Bank perpetuated itself in the Kentucky Court of Appeals, the Court struck the Thompsons' brief (Ky. CR. 76.12 (8) (A) and dismissed the Appeal. (Ky. CR. 76.34 (6) (A). App. p. 7a, 9a. This was contra to the Court's ruling in *Bell* v. *Lindsey Wilson College*, 490 S.W. 2d 145 and 79-CA-1456-MR, App. p. 35a, where the Court had ruled that the Bank had prejudiced its rights to possession of the property at issue here. App. p. 35a, 37a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Was the hiring of police officers and others, by the Bank, to use force, terror, and violence to gain possession of the Thompsons-Appellants real property in a mortgage foreclosure action, and to criminally prosecute the Thompsons (Appellants) to aid in the wrongful foreclosure, in contravention of their (Thompsons-Appellants) constitutional rights?

United States Constitution, 4th, 5th, and 14th Amendments.

Looking at the question, based upon the facts and principles involved, it seems to be opposed to all of the principles upon which the rights of citizens hinge.

In such case there is no safety for the citizen, except in protection of the *Judicials*, for rights which have been invaded by officers . . . (of the law) . . . professing to act for it. There remain to him, but the alternative of resistance which may amount to a crime. *Bivens Supra* 91 US 2004; *Monroe* v. *Pape*, 365 U.S. 167; *U.S.* v. *Lee*, 106 U.S. 196, 219.

It was an abuse of a penal statute relating to criminal trespass to use it to try disputed rights in real property. *State* v. *Larson*, 143 N.E. 2d 502.

And the hiring of police officers by the Bank (App. p. 19a, 20a, 27a, 29a; Rec. p. *Exhibits not indexed*) provided the state action to show a direct violation of the Fourteenth Amendment equal protection rights, whether or not the actions were officially authorized or lawful. *Adickes* v. *Kress & Co.*, 398 U.S. 144; *Monroe* v. *Pape, Supra*. . . . Any person in peaceful and quiet possession of land shall not be turned out by the strong hand, by force, or by terror . . . The policy of the law is to require that party who has in this

manner obtained possession shall restore it to the party from whom it had been so obtained. *Iron Mountain and Helena Railroad* v. *Johnson,* 119 U.S. 608, 30 LEd 504.

Mr. Nelson had let it be known that (Eddie) Thompson would be arrested if he (Eddie) attended any foreclosure sale of their (Thompson) home. And, if there was a sale, it was not a public sale.

Also, the Master Commissioner did not sell according to the judgment and order of sale. Rec. p. 23-27. Example — For purchase price, the Master will take from purchasers: bonds in three (3) equal installments with good and sufficient surety, bearing interest from date of sale and payable to Master. Purchaser to deposit $25.

We say *if* there was a sale because the Thompsons never got the equity ordered paid to them. App. p. 41a, 42a; Rec. p. 31.

The Thompsons had no notice of any *hearing* on the April 12, 1978, writ and order of possession, App. p. 23a, 24a, or order of April 18, 1978, denying any Rule 60.02 Motion. App. p. 31a, 32a; Rec. 43, 44. The Bank saw to that!

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense . . . *Pennoyer* v. *Neff,* 95 U.S. 773, . . . Must be granted at a meaningful time and in a meaningful way. *Fuentes* v. *Shevin,* 407 U.S. 67 . . . And appropriate to the nature of the case. *Mullane* v. *Central Hanover B & T Co.,* 339 U.S. 306, 320.

Could there be a valid sale without appraisal or alternatively, where mortgagee refused payment and returned mortgage payments to mortgagor?

It is an admitted fact that the Bank refused the Thompsons payments. App. p. 21a, 22a; Rec. p. *Exhibits not indexed.* The Master Commissioner summed it up as "a misunderstanding between the parties." Supplement Rec. p. 18. The Master Commissioner wilfully neglected to be specific.

If the party offered to pay, was ready to pay, and it would not be accepted, it defeated the sale as much as payment. *Atwood* v. *Weens,* 99 U.S. 183, 187; *Bennett* v. *Hunter,* 9 WALL. 326.

Where it is clear that a tender made will not be accepted, it need not be kept good or paid into court. *Carmichael* v. *Rice,* 158 p. 2d 290; *Dolton* v. *Cain,* 20 LEd 830.

When we consider that the Bank reportedly paid $14,500.00 for the Thompson property (App. p. 41a, 42a; Rec. p. 31) and sold it to a family on welfare for $48,500.00, a $34,000.00 difference, we know fraud was intended.

Let us also consider the fact that the Bank never paid the $5,952.60 ordered paid to the Thompsons by the Court. App. p. 41a, 42a; Rec. p. 31.

Under Kentucky law, the mortgagee must make an accounting to mortgagor for actual value instead of selling value of property. *Aultman and Taylor Co.* v. *Mead,* 121 Ky 241.

No accounting has been made in this case.

In this state, a judgment foreclosing a mortgage as commonly expressed, does not divest title or confer possession. *K.R.S. 426.525, Springfield Fire and Marine Ins. Co.* v. *Phillips,* 16 K.L.R. (Abstract) 390 . . . Nor does the mortgage convey an estate in the land to the mortgagee. *Morgan* v. *Wickliffe,* 24 K.L.R. 1039, 70 S.W. 680.

The appraisers admit they were unable to gain entrance to the Thompson home. App. p. 33a, 34a; Rec. p. 28. And the appraisers were never inside the property.

To sell land under execution without appraisement is void . . . as no coercise sale for debt can be lawfully made. *Angel* v. *Byars,* 153 Ky 208, *Adams* v. *Napier* (Ky. 1960) 334 S.W. 2d 915.

The Bank lost its legal right to possession of the Thompson property when it asked for dismissal with prejudice of its forcible detainer action 79-CA-1456-MR. App. p. 35a, 37a.

Judgment for defendants in action of ejectment to recover possession . . . had the effect of denying plaintiff's claim of title to land in dispute. *Hub Bel Air, Inc.* v. *Hirsch,* 102 A 2d 550.

Could one panel of court of appeals overrule another panel of court of appeals in the same case on the same issue?

From time immemorial "record on appeal" has been defined as thus: In the practice of appellate tribunals, the history of the proceeding on trial of the action below (with the pleading, offers, objections to evidence, ruling of the court, exceptions, charges, etc.) insofar as same appears in the record furnished to appellate court . . . insofar as they were taken, prosesented or allowed in formal and proper manner necessary to put them upon the record of the court. *Clume* v. *United States,* 159 U.S. 590.

To defeat this pronounciation, Deputy Clerk, E. Nienaber, had made at least 3 diffferent certifications of the record. App. p. 15a, 16a, 17a, 18a, 44a Record Certification. The certifications are in violation of Ky. CR. 75.07 and were intended to conceal the fraud being practiced upon the Thompsons and the Court.

We may note that some Exhibits are missing from the record, some reindexed, and others not indexed at all.

The Kentucky Court of Appeals arbitrarily denied the Thompsons oral argument pursuant to Kentucky CR. 76.16 (4). App. p. 11a, 13a.

Oral arguments, . . . are encouraged by appellate courts in that they assist reviewing court to fuller understanding of theories and issues on appeal. *Edmonds* v. *Stratton* (MO. 1970) 457 S.W. 2d 228.

The Kentucky Court of Appeals denied 2 motions by the Bank to dismiss the Thompson appeal. App. p. 12a, 13a. 76.34 (6) (A), 76.38 (2).

A motion to dismiss requires a consideration of the merits of an appeal 79-CA-1456-MR. App. p. 38a. When the Court of Appeals dismissed the Thompsons appeal its action was contrary to its ruling in *Bell* v. *Lindsey Wilson College*, 490 S.W. 2d 145, 79-CA-1456-MR. App. p. 35a, 37a and Ky. SCR 103 (8) (A).

Under doctrine of law of the case, one panel of an appellate court would be bound by decision of another panel considered to be erroneous, but where explanation for the prior panel's ruling is not given, it would be presumed that the ruling was not erroneous; that presumption defines the boundaries of law of the case inquiry. *Key* v. *Wise*, 629 F 2d 1049.

A recent opinion . . . of court of appeals . . . may not be overruled by another panel of judges, but only by the full court. *Mollory* v. *U.S.*, 259 F 2d 801, *Sikora* v. *American Can Co.*, 622 F 2d 1116.

The denial of an appeal is an unconstitutional restriction of the rights of the appellant. *Kentucky Constitution*, Sec. *115 Cole* v. *Stephens*, 582 S.W. 2d 657 and where there was no review of the record, no search for reversible error by the court below and no determination of whether

defendant received a fair trial . . . the defendant has not had the benefit of an appeal. *Taylor* v. *Commonwealth*, 568 S.W. 2d 52.

The burden of showing an appeal is frivolous is on the party making such suggestion. *Coppedge* v. *U.S.*, 369 U.S. 438.

A decision of a state appellate court which despite a statute providing for an appeal as a matter of right wholly denies any right of appeal is an "Unreasonable distinction" which the Fourth Amendment forbids states to make. *Williams* v. *Oklahoma*, 395 U.S. 458.

A state cannot in exercise of its control over local law and practice, vest state court with power to violate the supreme law of the land. *Kalb* v. *Feuerstein*, 308 U.S. 433, 439.

Generally, any acts, which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration or rules developed by the courts and follows under doctrine of state decisis, are in "excess of jurisdiction" is so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari. *Abellira* v. *District Court of Appeal, Third District*, 109 P. 2d 942 and in determining whether state action is violative of the due process clause of the Fourteenth Amendment it is immaterial whether the state has acted solely through its judicial branch, since whether legislative or judicial branch, it is still the application of state power which must be scrutinized. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449.

Is the denial of a motion to relieve a party from final judgment, order, or proceeding a final appealable order?

In considering whether a petition to set aside a judgment was improperly dismissed, undenied allegations must be accepted as true. *Klapport* v. *United States,* 335 U.S. 601.

Where issue was purely one of law, it could be decided on appeal even though district (lower) court refused to consider on grounds it was not ready for adjudication. *Briscoe* v. *Levi,* 53 LEd 2d 439; *Silas* v. *Sears, Roebuck & Co.,* 586 F 2d 382; *Kentucky Workman's Compensation Bd.* v. *Alexander,* 562 S.W. 2d 670; *Bell* v. *Lindsey Wilson College,* 490 S.W. 2d 145; *Salitan* v. *Dashney,* 347 P 2d 974, 81 ALR 2d 53; *Metropolitan Life Ins. Co.* v. *Myers,* 109 S.W. 2d 1194.

In a case of this kind where there is and can be no question that gross fraud has been committed and money (and property) obtained unjustly from another, technicalities of interpretation or refinement of distinction should not and will not be permitted to embarrass the court in exercising its power to do justice. *Metropolitan Life Ins. Co. of New York* v. *Myers,* 270 Ky. 523, 109 S.W. 2d 1194.

The record in this case is replete with evidence of fraud on the part of appellee, and it would be a waste of time to discuss it further except to say, insofar as this action is concerned, Appellee's failure to contest Appellants' issue and facts in brief (to Kentucky Court of Appeals) is conclusive of the only question presented, and the trial court erred in adjudging otherwise. *Webb* v. *Nicely,* 286 Ky 632, 151 S.W. 2d 768.

Equitable relief against fraudulent judgment is not of statutory creation, but is judicial devised remedy fashioned

to relieve hardship which from time to time arises from a hard and and fast adherence to court made rule that judgment should not be disturbed after the term of their entry has expired. *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238.

CONCLUSION

Among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are rights to acquire, enjoy, own, and dispose of property. *Shelley* v. *Kraemer*, 92 LEd 1161, 334 U.S. 1.

After confirmation of a judicial sale, a court of chancery is authorized to set aside the sale where a proper case is presented by direct proceeding for the purpose, provided that the grounds be sufficient to justify the court in applying equitable relief. *CR. 60.02, Maynard* v. *Maynard*, 167 S.W. 2d 853; *Kalb* v. *Fuerstein*, 84 LEd 370.

Wherefore, the Thompsons are entitled to a Judgment declaring null and void the foreclosure sale of April 21, 1977, the Order confirming the sale (June 27, 1977), and the deeds and writs and order of possession entered thereafter, and any other good and proper relief they (the Thompsons) are entitled.

PATRICIA THOMPSON, Pro Se
EDDIE THOMPSON, JR., Pro Se